

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

SOUTH NASSAU COMMUNITIES HOSPITAL
Employer¹

and

Case No. 29-RC-9363

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 30, AFL-CIO
Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Joanna Piepgrass, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that South Nassau Communities Hospital, herein called the Employer, is a New York corporation with its principal office and place of business at 2445 Oceanside Road, Oceanside, New York, herein called the Oceanside

¹ The Employer's name appears as amended at the hearing.

² The Regional Director hereby amends the Petitioner's name sua sponte.

facility, and is engaged in operating a hospital providing health-care services. The parties stipulated that, during the past 12 months, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000, and purchased and received at the Oceanside facility, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York. The parties also stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act, and is an acute care hospital as defined in Section 103.30(f)(2) of the Board's Rules and Regulations.⁴

Based on the stipulation of the parties, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, is a health care institution within the meaning of Section 2(14) of the Act, is an acute care hospital as defined in Section 103.30(f)(2) of the Rules, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The undersigned hereby amends the transcript sua sponte as follows: All references to Section "214" of the Act should be punctuated as Section 2(14).

⁴ During the hearing, the parties inadvertently forgot to address the Employer's status as an acute care hospital. However, after the hearing closed, the parties signed a written stipulation that the Employer is an acute care hospital. The stipulation is hereby received into evidence as Joint Exhibit No. 1.

5. The International Union of Operating Engineers, Local 30, AFL-CIO, herein called the Petitioner, seeks to represent the following unit of employees employed at the Employer's Oceanside facility in the power plant and maintenance department:⁵

All full-time and regular part-time watch engineers, firemen, oilers, mechanics, maintenance mechanics, electricians, carpenters, plumbers, drivers, HVAC mechanics, painters, gardeners, material coordinators and assistant shop foremen, but excluding all other employees, clerical employees, professional employees, guards and supervisors as defined in the Act.

The petitioned-for unit essentially constitutes a unit of skilled maintenance employees, one of the eight bargaining units which the Board has determined to be appropriate in acute care hospitals. *See* Section 103.30 of the Board's Rules and Regulations.

Three areas of dispute have arisen with respect to the unit. First, the Employer asserts that the assistant shop foremen are supervisors as defined in Section 2(11) of the Act, and therefore must be excluded from the unit. Second, the Employer claims that a clerical employee in the maintenance department must be included in the bargaining unit as a "plant clerical" because she shares a community of interest with the petitioned-for employees. Third, the Employer asserts that an engineering aide in the maintenance department must also be included in the unit because he shares a community of interest with the petitioned-for employees. In essence, the Employer's position is that all nonsupervisory employees in the maintenance department must be included. The Petitioner contests all three of the Employer's contentions, and furthermore argues that the clerical employee must be excluded as a confidential employee.

⁵ The petitioned-for unit appears as amended at the hearing.

In support of its position on the unit issues, the Employer called its director of engineering, Joseph Mihalich, to testify. Neither party called any employees in the disputed classifications (assistant foremen, secretary, engineering aide) to testify.

Overview of the Employer's Maintenance Department and Power Plant

In his capacity as director of engineering, Mihalich oversees both the maintenance department and the power plant.

The maintenance department, located in the northeast corner of the Employer's main hospital building, contains a large maintenance shop area, a general storage area for tools and supplies, special areas for HVAC and plumbing supplies and tools, office space, a carpenters' shop, and a locker room. Working directly under Mihalich in the maintenance department is the assistant director of engineering, Thomas Lyons.

Working under Lyons in the maintenance department, there used to be a maintenance shop foreman, Robert Parish, although the foreman position was vacant at the time of the hearing. Maintenance department employees (whose duties are described in more detail below) include 2 assistant shop foremen, 17 mechanics, 2 painters, 2 gardeners, a driver, a materials coordinator, an engineering aide and a general secretary.

The Employer's power plant is located in a separate building, approximately 40 feet away from the northeast corner of the hospital building. Mihalich described the power plant as containing "four boilers, two chillers and the associated electrical and pumps and etc." It also contains a locker room for the power plant employees. The

power plant is supervised by the chief engineer, William Rufano, who oversees a group of 6 watch engineers.⁶

Employees in the petitioned-for skilled maintenance unit are generally involved in the maintenance, repair and operation of the hospital's physical plant systems. Specifically, the watch engineers monitor and maintain the high-pressure boiler process. Mihalich estimated that the watch engineers spend 95% of their time in the power plant, although on "rare" occasions they work on chillers in the main facility.

Mechanics in the maintenance department are classified in descending order of skill as A, B or C mechanics. The high-skill "A" mechanics perform the most complex repairs to the Employer's plumbing, electrical and air conditioning systems. "B" mechanics assist the A mechanics in the plumbing, electrical and air conditioning repairs, and also perform some of the same less-skilled work as "C" mechanics. Both A and B mechanics use specialized tools such as plumbers' snakes and electrical meters. C mechanics perform maintenance tasks such as changing lightbulbs, changing ceiling tiles, changing filters, hanging pictures, and generally assisting the other mechanics, using basic hand tools. The mechanics work in all areas of the Employer's facility, performing maintenance and repairs wherever they are needed. Mechanics can move up the classifications (e.g., from C to B) when they gain more mechanical experience and skill. C mechanics are required to have some type of mechanical background, three years of experience and a high school diploma or its equivalent. The record does not

⁶ Although the parties did not explicitly stipulate, there seems to be no dispute that the director of engineering, assistant director of engineering, shop foreman and chief engineer are excluded from the bargaining unit as supervisors. The record indicates that these positions entail such supervisory duties as hiring employees, or recommending them for hire; disciplining employees or recommending discipline; scheduling employees including their vacation requests; and approving overtime. Thus, based on the

indicate the requirements for A and B mechanics, such as whether they are required to be licensed for electrical or plumbing work.

The painters paint the main hospital building and the Employer's related buildings nearby, such as professional buildings and an outpatient dialysis center. They also hang wallpaper. The painters have a shop, with a storage room for painting materials and a locker room, in a separate building near the power plant. The gardeners maintain all the grounds by cleaning debris, removing snow and dumping bulk items. They work with tools stored in a shed adjacent to the hospital building. It appears from the record that the driver makes various pick-ups and deliveries, including mail and supplies. When the driver is on vacation, a mechanic performs the driver's duties. The materials coordinator, who works in the maintenance department in the main hospital building, orders the materials and parts that the mechanics need. He also hands out power tools, which are kept in a secured area, to the mechanics as needed.

Employees in the above-mentioned classifications (watch engineers, mechanics, gardeners, driver and materials coordinator) wear a uniform consisting of a blue shirt and blue trousers, except that painters wear a white shirt and white trousers. They all use a locker room in the maintenance department, except that the watch engineers have their own locker room in the power plant.

Employees in the above-mentioned classifications are all paid on an hourly basis, and all receive the same benefits. Time cards for maintenance employees are kept in a rack in the maintenance department. It is not clear from the record whether the watch engineers' time cards are kept in the maintenance department or in the power plant.

record, I find that the director of engineering, assistant director of engineering, shop foreman and chief

The Employer uses a computerized system, called the Computer Assisted Maintenance Management Program (CAMMP), to schedule routine maintenance and to generate work orders for specific repairs. In general, when the department receives a specific request, the information is logged onto a sheet and entered into the computer. A written work order is then printed from the computer, and assigned to a mechanic or painter by placing the order in the appropriate box in the maintenance department. The Employer can also page mechanics for urgent repair. (There are five mechanics who carry pagers during their shift.) After the work is completed, certain information, such as how long the repair took, is entered into the CAMMP system. Various people are involved in entering information into the CAMMP system and generating work orders, including the secretary, the foreman, the assistant foremen, the materials coordinator and a consultant from the company that leases the CAMMP system to the Employer.

Assistant Shop Foremen

Although the Petitioner seeks to include the assistant shop foremen (Fernando Moretti and William H. Brody) in the bargaining unit, the Employer asserts that they must be excluded as statutory supervisors.

Assistant foreman Fernando Moretti oversees two painters and also performs painting work himself. Mihalich estimated that Moretti spends approximately 50% of his time painting, 25% generally coordinating the painting jobs (i.e., sizing each job, ordering the materials needed, and making arrangements with the department to be painted), and 25% overseeing the other two painters. Their jobs include a long-term painting schedule for the hospital, and specific requests for "touch-ups." Moretti's duties

engineer are supervisors as defined in Section 2(11) of the Act, and are therefore excluded from the unit.

include generating and assigning work orders. He gives some to the other painters and keeps some for himself.

On direct examination, Mihalich testified somewhat vaguely that Moretti plays a role in evaluating the painters, and that Moretti has recommended discipline of painters, but Mihalich did not initially give any specific examples. On cross examination, Mihalich stated that Moretti "disciplined" a painter named Jose Luis Rodriguez for excessive use of sick time. Specifically, Mihalich explained that he himself approached Moretti because Mihalich thought that Rodriguez was taking too much sick time, and Moretti concurred. Mihalich later gave a verbal warning to Rodriguez, and Moretti was present in the room at the time.

Mihalich also testified on cross examination that Moretti was involved in interviewing a prospective painter, whose name Mihalich could not remember. Mihalich explained that, since Moretti knows painting better than anyone else in the hospital, he could "look over" a candidate's qualifications. The hiring decision is ultimately made by Mihalich himself.

Moretti works the same hours as the other painters, and gets the same benefits. However, he earns a higher hourly rate than they do. Moretti is sometimes assigned to work overtime by Mihalich or Lyons. Moretti has a work bench in the paint shop, but he does not have a desk.

The other assistant shop foreman, William H. Brody, previously worked as an A mechanic. He was promoted to the assistant foreman position six months ago, in May 1999. He receives the same benefits as other maintenance department employees, but a higher hourly wage rate. Mihalich testified that all mechanics report to the foreman

(previously Robert Parish, now vacant) or to Brody. Mihalich estimated that Brody spends 60% to 70% of his time performing carpentry work, and approximately 30% to 40% helping the foreman coordinate the mechanics' work. For example, if a new office wall is being installed in the hospital, Brody helps coordinate the carpentry work with the necessary electrical and plumbing. Brody wears a white shirt and blue trousers, unlike the mechanics who wear a blue shirt and blue trousers. He does not have a separate office. In the six months since his promotion, he has not been involved in interviewing any job candidates, or disciplining any employees.

In enacting Section 2(11)'s definition of "supervisor," Congress stressed that only individuals invested with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen ... and other minor supervisory employees." Quadrex Environmental Company, Inc., 308 NLRB 101, 102 (1992)(quoting S.Rep. No. 105, 80th Cong., 1 Sess. 4 (1947)). It has long been the Board's policy not to construe supervisory status too broadly, since a finding of supervisory status deprives individuals of important rights protected under the Act. Id. A party who seeks to exclude alleged supervisors from a bargaining unit therefore has the legal burden of proving their supervisory status. Tuscan Gas & Electric Co., 241 NLRB 181 (1979); The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989). Furthermore, to prove supervisory status under Section 2(11), the party must demonstrate not only that the individual has certain specified types of authority over employees (e.g., to assign or responsibly direct them), but also that the exercise of such authority requires the use of "independent judgment," and is not merely "routine" in nature.

In the instant case, the Employer has not met its burden of proving that the assistant shop foremen are supervisors as defined in the Act. At most, they possess some low-level authority to assign and oversee employees, but without using independent judgment and without exercising any real supervisory authority over their employment status.

Although Moretti and Brody may assign certain work to painters and mechanics, there is no evidence that such assignment requires independent judgment or is anything but routine.⁷ In any event, it is well established that "the exercise of authority on the part of more skilled and experienced employees (such as typical leadmen in crafts) to assign and direct other employees in order to assure the technical quality of the job does not in itself confer supervisory status." Brown & Root, Inc., 314 NLRB 19, 22 (1994).

Furthermore, Mihalich's testimony that assistant foremen have authority to recommend discipline was not supported by specific examples. Such conclusionary statements, without specific and competent supporting evidence, are insufficient to establish supervisory status. Sears, Roebuck & Co., 304 NLRB 193 (1991). The only instance Mihalich cited, where he himself initiated and delivered a verbal warning to Rodriguez, does not even show that Moretti recommended discipline, let alone that he *effectively* recommended discipline and that management accepted his recommendation without conducting its own investigation

⁷ Contrary to bald assertions in the Employer's post-hearing brief, there is no evidence that assistant foremen make "management decisions requiring the exercise of independent judgment with regard to staffing and materials needs." For example, there is no evidence that assistant foremen effectively decide such staffing issues as how many employees to hire or retain, or whether employees may work overtime. Cf. NLRB v. Metropolitan Petroleum Company of Massachusetts, 506 F.2d 616, 87 LRRM 3139 (1st Cir. 1974)(dispatchers who determined the number of drivers needed, affecting the levels of employment and layoffs, found supervisory). Rather, Mihalich's testimony regarding assignment of work shows nothing more than a routine "divvying up" of job assignments among available employees.

or using its own judgment. Similarly, Mihalich's testimony that Moretti attended the interview of one prospective painter falls far short of establishing that Moretti effectively recommends hiring of employees. A person's mere presence at job interviews does not confer supervisory status, Anamag, 284 NLRB 621, 623 (1987), without evidence that the person's recommendations are automatically or generally accepted by the Employer without independent review. Furthermore, although Mihalich responded affirmatively to a question of whether Moretti "plays any role" in evaluating painters, the record is devoid of any evidence that such role directly affects employees' status. It is well settled that the authority simply to evaluate employees, when the evaluations have no demonstrated effect on their employment status, is insufficient to confer supervisory status. Passavant Health Center, 284 NLRB 887, 891 (1987); Panaro and Grimes, a Partnership d/b/a Azusa Ranch Market, 321 NLRB 811, 813 (1996). Finally, the record contains no evidence that the assistant foremen have authority to suspend, discharge, transfer, reward, promote, layoff or recall employees, or to adjust their grievances. Absent such "primary" statutory criteria, evidence of any "secondary" indicia (e.g., higher wages) is insufficient to support a finding of supervisory status. Bay Area-Los Angeles Express, Inc., 275 NLRB 1063, 1080 (1985); Memphis Furniture Mfg. Co., 232 NLRB 1018, 1020 (1977).

Based on the foregoing, I find that the Employer has not met its burden under Tuscan Gas, supra, of proving that the assistant shop foremen are supervisors as defined in Section 2(11) of the Act. That classification will therefore be included in the bargaining unit.

Clerical employee

As noted above, the Employer seeks to include a maintenance-department clerical employee, Ann Charleson, in the bargaining unit, arguing that she shares a community of interest with the skilled maintenance employees as a "plant clerical." The Petitioner rejects that contention, and furthermore argues that the clerical employee must be excluded as a confidential employee.

Charleson works in the maintenance department office. Mihalich, to whom she reports, estimated that Charleson spends 40% to 50% of her time processing information in the computerized system (CAMMP), including printing out work orders, entering data (e.g., how long various jobs took) and "closing out" the work orders. Charleson spends approximately 10% of her time processing employees' time cards.⁸ Mihalich testified that Charleson spends the remaining portion of her time performing general clerical duties, such as typing and filing. There is no evidence that she performs any "hands on" maintenance or repair work. During Charleson's absence, various people perform her duties. For example, the materials coordinator handles work orders, and the assistant director and foreman process the time cards.

Mihalich testified that Charleson also hands out work orders to maintenance employees. For example, there is a plumber who routinely checks the water temperature in various patient-care areas of the hospital. However, if the maintenance department gets a phone call about a stopped toilet, Charleson may "page" the plumber to ask him to

⁸ Specifically, after the foreman and chief engineer review the time cards for employees in the maintenance department and power plant, respectively, Charleson manually adds up the hours and transfers the totals to a calendar log. The time cards then go to assistant director Lyons for final approval, before they go to the payroll office.

fix that toilet right away. Mihalich explained that Charleson may send out "typical" orders herself, but she asks assistant director Lyons if an unusual problem arises.

Mihalich testified that Charleson has typed disciplinary memos and some correspondence (unspecified) between Mihalich and the personnel department. However, Mihalich also stated that he himself types many confidential documents. Charleson does not type employee evaluations that Mihalich writes, and she did not type any memos regarding the current union organizing campaign. Mihalich said there "may have been" occasions where Charleson typed a memo to upper management regarding employees' wage rates, but he could not recall a specific instance.

Charleson is paid on an hourly basis, and receives the same benefits as other employees in the maintenance department. She attends the regularly-scheduled department meetings. The record does not indicate whether she wears a uniform.

In adopting its rules regarding appropriate bargaining units in acute care hospitals, the Board noted that skilled maintenance units "should generally include all employees involved in the maintenance, repair, and operation of the hospitals' physical plant systems, as well as their trainees, helpers and assistants." Proposed Rules, 29 CFR Part 103, reported at 284 NLRB 1527, 1561 (1988). The Board went on to state that the following classifications should generally be included in skilled maintenance units: carpenter, electrician, mason/bricklayer, painter, pipefitter, plumber, sheetmetal fabricator, automotive mechanic, HVAC mechanic, maintenance mechanic, chief engineer, operating engineer, fireman/boiler operator, locksmith, welder and utility person. In subsequent cases, the Board made clear that skilled maintenance units should include *only* those employees who perform skilled maintenance work, or trainees and

assistants who help in the performance of such work. Barnes Hospital, 306 NLRB 201 (1992); Ingalls Memorial Hospital, 309 NLRB 393, 396 (1992). On that basis, the Board has generally excluded clerical employees from skilled maintenance units in acute care hospitals. In Barnes Hospital, *supra*, the Board excluded clerical employees in the hospital's engineering and design/construction departments from a skilled maintenance unit, inasmuch as they performed no skilled maintenance work. In that case, the Board also found that those clerical employees would be more properly placed in a general service and (unskilled) maintenance unit. *Id.* Similarly, in Ingalls Memorial Hospital, *supra*, the Board upheld a regional director's exclusion of clerical employees in the hospital's plant operations department from the skilled maintenance unit. *See also* William W. Backus Hospital, 220 NLRB 414, 415 (1975)(maintenance clerks appropriate in service and maintenance unit).

Thus, it is well established that employees who primarily perform clerical functions -- and who do not perform skilled maintenance work -- are excluded from skilled maintenance units in acute care hospitals, even if they work in the same department as skilled maintenance employees, and even if their work is closely related to skilled maintenance employees' work. In this regard, the Employer's analogy to "plant clerical employees" in an industrial production and maintenance unit is not applicable to the acute-care setting. The only acute care bargaining unit case cited by the Employer, San Juan Regional Medical Center, 307 NLRB 117 (1992), involved the inclusion of highly-skilled biomedical technicians, who repaired and maintained sophisticated hospital equipment, in a skilled maintenance unit. The San Juan case did not involve clerical employees, and it therefore does not contradict the Board's holdings in Barnes

Hospital and Ingalls Memorial Hospital, supra, that clerical employees do not belong in the skilled maintenance unit.

Based on the foregoing, I conclude that the maintenance-department clerical employee is appropriately excluded from the petitioned-for unit of skilled maintenance employees.⁹

Engineering Aide

The Employer also seeks to include the engineering aide, Steve Demachowski, in the unit of skilled maintenance employees.

Demachowski reports to the assistant director and director of engineering (Lyons and Mihalich). He works in a storage area, behind Mihalich's office, where the maintenance department's drawing files and project books are stored. He does not perform actual drafting of plans, but he uses a drafting table there to study and categorize plans. He also uses a computer to set up charts and a "work calendar" that schedules such periodic tasks as checking the door alarms. Mihalich estimated that Demachowski spends 25% to 30% of his time preparing those charts. Demachowski spends approximately 30% of his time dealing with outside contractors for certain small projects. For example, he recently solicited bids for a fence-improvement job. Mihalich testified that Demachowski spends the remaining 40% of his time with "miscellaneous work" including assisting Lyons in various tasks. Mihalich stated somewhat vaguely that "it could be on maintenance repair items," but it is not clear from that statement that Demachowski actually performs any repairs himself, as opposed to helping schedule or

⁹ Consequently, I need not resolve the issue of whether Charleson is a confidential employee.

arrange them.¹⁰ Although Demachowski has a boiler operator's license, there is no evidence that he operates the boilers.

Unlike the other maintenance employees described above, Demachowski is a salaried employee, and does not earn overtime pay for working overtime hours. He does not wear a uniform but, rather, wears a jacket and tie, as do the director and assistant director of engineering. The promotional track for an engineering assistant would be to become an assistant director or director of engineering. (Mihalich himself was formerly an engineering aide.) In Demachowski's absence, Lyons or Mihalich perform his tasks if necessary. Demachowski receives the same benefits as other skilled maintenance employees, and attends the department's meetings.

As discussed above, the Board has held that skilled maintenance units in acute care hospitals should include only those who actually perform skilled maintenance work, and their trainees and assistants. In Ingalls Memorial Hospital, *supra*, the Board upheld a regional director's exclusion of certain employees (including project support coordinator, draftsman, and construction lead) who generally coordinated and planned construction projects, but who did not perform any "hands on" skilled maintenance work, and did not work as trainees or assistants to skilled maintenance employees. 309 NLRB at 398. Similarly, in The Toledo Hospital, 312 NLRB 652 (1993), the Board excluded a hospital's inventory control coordinator and material handler on the grounds that their primary job functions did not include skilled maintenance work on the

¹⁰ Contrary to assertions in the Employer's brief, the record contains no evidence that Demachowski "performs general maintenance work" or "works along side of other employees, either performing similar tasks or actually assisting in the work."

hospital's systems or equipment, and that they were neither apprentices nor helpers to the skilled maintenance employees. Id., 312 NLRB at 654.

In the instant case, Demachowski's duties as an engineering aide are analogous to the coordinators and draftsmen discussed above. Although he helps to study and categorize plans, to schedule certain maintenance work, and to coordinate with outside contractors, he does not himself perform the hands-on work of a skilled maintenance employee, trainee or assistant, as delineated by the Board in acute care skilled maintenance units. In any event, Demachowski does not appear to share a community of interest with the skilled maintenance employees, inasmuch as he works in a different location, does not use the same tools, is not directly supervised by the same supervisors (foreman, chief engineer) as the other petitioned-for employees, does not wear a uniform, is not paid on an hourly basis, and does not have the same promotional track. Clearly, the Employer has not shown "extraordinary circumstances" required under Section 103.30(a) of the Board's Rules to avoid the bargaining units determined appropriate for acute care hospitals.

A case cited by the Employer, Southern Baptist Hospitals, Inc., 242 NLRB 1329 (1979), pre-dates the Board's Rules for bargaining units in acute care hospitals. The issue in that case, whether "maintenance" employees could appropriately constitute a separate unit from "service" employees, has been definitively resolved by the Rules. The Southern Baptist case does not address the instant issue of whether, under the Rules, maintenance department employees who do not perform hands-on skilled maintenance work should be included in a skilled maintenance unit. The Board has clearly stated in

post-Rule cases that they should not, and the Employer has cited no post-Rule cases to the contrary.

Based on the foregoing, I conclude that the engineering aide is appropriately excluded from the petitioned-for unit of skilled maintenance employees.

In sum, I have rejected the Employer's contentions that the assistant shop foremen must be excluded from the skilled maintenance unit as supervisors, and that the clerical employee and engineering aide must be included in the skilled maintenance unit. Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees, including watch engineers, mechanics, maintenance mechanics, electricians, carpenters, plumbers, HVAC mechanics, assistant shop foremen, painters, gardeners, drivers and materials coordinators, employed by the Employer at its Oceanside, New York facilities, but excluding all other employees, clerical employees, professional employees, guards and supervisors as defined in the Act.¹¹

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who

¹¹ I have omitted the classifications of "firemen" and "oiliers" from the unit description, since the Employer does not appear to employ employees in those classifications.

are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 30, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before December 1, 1999. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by December 8, 1999.

Dated at Brooklyn, New York, this 24th day of November, 1999.

/s/ ALVIN BLYER

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